IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRL.R.C.Nos.1967 & 1968 of 2003
and
Crl.M.P.Nos.12969 &12970 of 2003

A.Viswanathan .. Petitioner in both revisions/Accused

-vs-

State by
Deputy Superintendent of Police
Vigilance and Anticorruption
Cuddalore. .. Respondent in both revisions/Complainant

These Revisions are filed under Section 397 r/w 401 Cr.P.C. against the order passed in Crl.M.P.No.601/2003 in S.C.No.4/2001 and Crl.M.P.No.998 of 2002 in S.C.No.5 of 2001 respectively dated 18.12.2003 on the file of Chief Judicial Magistrate(Special Judge)Cuddalore.

For petitioner : : Mr.M.V.Karunakaran

For respondent : : Mr.V.R.Balasubramanian
Additional Public Prosecutor

C O M M O N O R D E R

The accused in S.C.No.4 of 2001 on the file of the Chief Judicial Magistrate(Special Judge) Cuddalore, who is also the accused in S.C.No.5 of 2001 on the file of the same learned Judge, filed an application under Section 300 of Cr.P.C. and also under Article 20(2) of the Constitution of India, to discharge him from the charges levelled against him.

2. According to the petitioner/accused in an earlier case in S.C.No.3 of 1999, he was charged for an offence under Section 13(1)(e) r/w 13(2) of Prevention of Corruption Act 1988(hereinafter referred to as "Act") on the ground that he had amassed wealth of Rs.14,86,461/- which is disproportionate

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to his own income for the period from 1.1.1990 to 31.8.1996. According to the petitioner/accused in S.C.No.4 of 2001, he has once again been charged under Section 13(1)(a) r/w 13(2) of the said Act on the ground that he has received a sum of Rs.24,350/- by way of illegal gratification to sanction the electricity connection to fifteen persons for the period from 28.7.1993 to 15.6.1996. According to the petitioner/accused he has already been convicted in S.C.No.3 of 1999 for the charges levelled against him.

3. The learned counsel appearing for the revision petitioner would contend that Section 13(1) and its sub clauses of the said Act would mainly concern with the offence coming under misconduct and hence he cannot be convicted or tried once again under the same category of an offence in which he has already been convicted in S.C.No.3 of 1999.

4. Admittedly, an offence under Section 13(1)(a) of the said Act is entirely different from Section 13(1)(e) of the said Act. A specific charge under Section 13(i)(e) of the said Act against the accused is that he has amassed wealth to the tune of Rs.14,86,461/- during the period from 1.1.1990 to 31.8.1996 and the said income is disproportionate to his own source of income, he has earned as a Government Servant. That is why the accused was charged under S.C.NO.3 of 1999. In the said case, after the trial, he was convicted whereas under S.C.No.4 of 2001, the accused is facing a charge under Section 13(i)(a) r/w Section 13(2) of the said Act. The specific allegation is that he has demanded bribe from fifteen persons to the tune of Rs.24,350/- during the period from 28.7.1993 to 15.6.1996 for sanctioning the electricity connection to them. The learned counsel would admit that in the charges levelled against him in S.C.No.3 of 1999, it is not specifically stated that he has received a sum of Rs.24,350/- from fifteen persons during the period from 28.7.1993 to 15.6.1996. Even though the relevant period in S.C.No.3 of 1999 is from 1.1.1990 to 31.8.1996, the ill-gotten amount of Rs.24,350/- is not the subject matter in S.C.No.3 of 1999 under which the charges levelled against the accused is under Section 13(i) (e) r/w 13 (2) of the said Act. So the contention of the learned counsel appearing for the revision petitioner that the accused who has already been tried and convicted under Section 13(1)(e) r/w 13 (2) of the said Act cannot be tried once again in S.C.No. 4 of 2001 under Section 13(i)(a) r/w 13(2) of the said Act holds no water. The learned trial Judge has discussed all these points and has come to a correct conclusion that the revision petitioner cannot take shelter under Section 300 of Cr.P.C.

5. Even the petitioner has mentioned in Crl.M.P.No.601 of

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2003 in S.C.No.4 of 2001 that he has filed an application under Section 300 of Cr.P.C. as well as under Article 20(2) of Constitution of India, the trial Court is not empowered to give any finding under Article 20(2) of Constitution of India. Admittedly, the petitioner has not challenged the maintainability of the complaint preferred by the prosecution before this Court. Against the first limb of argument raised by the learned counsel appearing for the revision petitioner/accused that the complaint is not maintainable under Section 300 of Cr.P.C.is not sustainable .

6. The other limb of argument advanced by the learned counsel appearing for the revision petitioner/accused is that the Investigating Officer Mr.R.Dhakshanamurthy is the person, who had registered the first information report and that he is not a competent authority to investigate the same. In support of his contention, the learned counsel appearing for the revision petitioner/accused would rely on the following decisions.

(a) Bhagawan singh -vs- State of Rajasthan (AIR 1976 SC ,985)
(b) Singaravelu-vs- State (1985 L.W.(Crl) 336)
(c)Gyan Chand vs State of Rajasthan(1993 Crl.L.J.,3716)
(d)State-vs- Krishnasamy Iyer (1997-2 L.W.Crl.751)
(E)S.Chandran-VS-State (2001 (1) L.W.Crl., 230).

In the above said ratios, it has been held that a person who had registered the case is not competent to investigate the same. To answer this, the learned Additional Public Prosecutor would contend, relying on a decision reported in Ratilal Bhanji Mithani-v- State of Maharashtra(AIR 1979 Supreme Court 94) that once charge has been framed in a criminal proceedings then the Magistrate cannot discharge the accused under any circumstances. Both Crl.M.P.No.601 of 2003 in S.C.No.4 of 2001 and Crl.M.P.No.998 of 2002 in S.C.No.5 of 2001 were filed under Section 300 of Cr.P.C. and under Article 20(2) of Constitution of India. In Crl.M.P.No.998 of 2002 alone, the accused has stated that he has filed a petition under Section 239 of Cr.P.C. also which cannot be maintainable after framing of charges. The learned trial Judge has discussed all the points raised by the learned advocate before him and has come to a correct conclusion that the accused is not entitled to any relief under those petitions. Hence I do not find any

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illegality or infirmity in the order passed by the learned trial Judge to warrant any interference from this Court. As I have already observed in this order that the accused/revision petitioner has not challenged the maintainability of the complaint before this Court at any point of time.

7.Under such circumstances, I do not find any reason to interfere with the well considered order of the learned Chief Judicial Magistrate(Special Judge) Cuddalore in Crl.MP.No.601 of 2003 in S.C.No. 4 of 2001 and Crl.M.P.No.998 of 2002 in S.C.No.5 of 2001 dated 18.12.2003.

8. In fine, these revisions are dismissed confirming the order passed by the learned Chief Judicial Magistrate(Special Judge) Cuddalore in Crl.M.P.No.601 of 2003 in S.C.No.4 of 2001 and Crl.M.P.No.998 of 2002 in S.C.No.5 of 2001 dated 18.12.2003 respectively. Consequently, connected Crl.M.P.Nos.12969 and 12970 of 2003 are also dismissed.

9.The learned trial Judge is directed to proceed with the trial in S.C.No.4 of 2001 and S.C.No.5 of 2001 and dispose of the same within a period of three months from the date of receipt of a copy of this order.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sg

To

1. The Chief Judicial Magistrate(Special Judge)Cuddalore.
2. The Deputy Superintendent of Police,
   Vigilance and Anti-corruption , Cuddalore.
3. The Public Prosecutor, High Court, Madras

+1cc to Mr.M.V.Karunakaran, Advocate Sr 31837

KLT (CO)
km/12.6.

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